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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

MPA/143210

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 20, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability now known as the Office of the Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on September 25, 2012, at Jefferson, Wisconsin.

The issue for determination is whether the agency correctly denied petitioner's prior authorization (PA) request for occupational therapy (OT).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By written submittal: Barbara Evans, RN  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a resident of Jefferson County. He is 5 years old, diagnosed with Autism, and is certified for MA.
2. Petitioner receives OT services, speech services, and other special education services in his school (K4).
3. Petitioner receives in-home autism services from the Wisconsin Early Autism Project (WEAP) for about 3-4 hours daily.
4. Petitioner's private OT provider, Fort HealthCare Inc., requested PA for OT on June 26, 2012 (PA# [REDACTED]). The requested start date was for June 12, 2012, for OT services 1 time per week for 13 weeks.
5. On August 10, 2012 the agency issued a notice to petitioner advising that the PA request was denied. The agency's bases for the denial were that the information provided did not justify the intensity of the services requested and therefore the medical necessity of the services was not evident.

### DISCUSSION

OT is covered by MA under Wis. Adm. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6 (emphasis added). If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 112.001.02, nos. 2 and 3.

In reviewing a PA request the DHCAA/OIG must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. DHS 107 th at is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:

...

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The DHCAA/OIG argues that the information submitted by the provider did not show why the requested OT is required to prevent, identify or treat a recipient's illness, injury, or disability. There is no new illness or deficit shown by the requesting provider to indicate that there is something new going on with the petitioner that requires the private intervention, when he had been getting the services in school and with WEAP. The provider submitted an evaluation, however it is far short in describing what petitioner functional and actual limitations are in any detail. The evaluation states that he is limited in ADL's, brushing teeth, getting dressed, fine and gross motor coordination, postural control/balance, falling asleep, oral motor coordination, ocular motor coordination, social interactions, crossing midline, and bilateral integration. The evaluation states the following goals: brush teeth, and donning/doffing jacket, shirt, underwear, socks, pants and shoes. The only small descriptor of what the limitations are, with respect to teeth brushing, states, "Standing without support." The evaluation states the anticipated treatments

include: balance training, ADL training, caregiver training, desensitization, neuromuscular reeducation, patient education, therapeutic exercises, and visual/perceptual training. Such descriptive language is not the type of objective clinical assessment of improvements, regressions, or status in skills as compared to a baseline assessment. How were his limitations measured? This is why a baseline quantitative assessment is performed and subsequent assessments on the same or similar basis are necessary to demonstrate “progress”. Without clinical information to identify petitioner’s gains or losses in performance of pre-requisite skills or overall functional skills, the PA request is not supported.

Further, no treatment plan was submitted from WEAP, and it is unclear what coordination took place with the school’s therapists. The IEP states that he is “able to undress and can dress for outside, with assist to zipper, but needs prompts and redirections to stay focused on the task.” and that “He needs help with dressing for outdoors, basically due to refusal behavior.” This is an example of showing why the private OT must show what deficits he has and why he requires the OT services (or at least to one of the requested goals) when it is addressed in school. The provider should be showing why it is needed beyond what he can get in school, WEAP, or via a home program.

Finally, petitioner’s mother, who is an excellent advocate for her son, described her intention for the outside PT to continue the services he would not be getting from the school over the summer months and to assist with his handwriting deficits. I note that this was not even a goal listed by the private provider. I also add that it still does not provide us with measurable limitations, or explain why/why not WEAP services or home programming would not also be covering those skills. Petitioner is essentially at the mercy of the provider who is required to justify the requested services.

Based upon my review of the record in this case, I must agree with the DHCAA/OIG’s decision to deny the PA. The basic assertion of the DHCAA/OIG has been the lack of evidence that would justify the medical need for continued OT services in a clinical setting as requested. I agree that that information has not been presented. Therefore, I must conclude the requested OT in this case is not covered by the MA program. The DHCAA/OIG was therefore unable to approve the requested service.

I note for petitioner’s benefit that this is not a bar to submitting another PA request for OT. The requesting provider will need to provide the basic documentation to support another request, however.

While petitioner may believe this to be unfair, it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on constitutional or equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency correctly denied petitioner’s PA request for OT.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein is dismissed.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

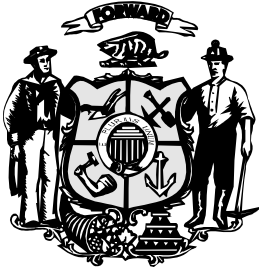
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of October, 2012

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Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals

c: DHSDHADHCAA@wisconsin.gov, DHSDHADHCAA@wisconsin.gov - Health Care Access & Accountab



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The preceding decision was sent to the following parties on October 22, 2012.

Division of Health Care Access And Accountability